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In re Application of	:	
Hirsch et al.	:	
Application No. 10/088426	:	DECISION ON
PCT No.: PCT/EP00/06174	:	
Int. Filing Date: 03 July 2000	:	PAPERS UNDER
Priority Date: 17 September 1999	:	
Atty. Docket No.: 22156	:	37 CFR 1.42
For: Device For Thermally Treating	:	
Granular Solid Matter	:	

This is in response to the "Communication" filed on 30 July 2003 and the "Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181..." filed on 16 April 2004.

DISCUSSION

On 01 October 2002, a Decision on Papers Under 37 CFR 1.42 was mailed to applicant, indicating that the declaration was not being accepted under 37 CFR 1.42 because

Review of the copy of the declaration filed on 12 June 2002 reveals that it was executed by Kristina Stolarski, acting in the capacity of legal representative for Eberhard Stolarski in accordance with 37 CFR 1.42. The declaration includes citizenship, residence and post office address information for Eberhard Stolarski, but does not include the citizenship, residence and mailing address of the legal representative. As such, the declaration is not in compliance with 37 CFR 1.497(b)(2). Accordingly, it would not be appropriate to accord the application status pursuant to 37 CFR 1.42 on the basis of the present record.

The 01 October 2002 decision did not set a period for response. However, on 01 March 2004, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the U.S. because "applicant has failed to properly respond to Decision on papers under 37 CFR 1.42, dated October 01, 2002." Insofar as the Decision mailed on 01 October 2002 inadvertently failed to set a time period for response, the Notification of Abandonment was improper, and it is hereby VACATED.

With regard to the submission under 37 CFR 1.42, counsel asserts that a declaration of the inventors filed on 12 June 2002 listed the citizenship, residence and post office address information for deceased inventor Eberhard Stolarski, and that another declaration of the inventors filed on 12 June 2002 listed the citizenship, residence and post office address information for Kristina Stolarski, Executrix of the estate of deceased inventor Eberhard Stolarski, and requests that the papers be accepted under 37 CFR 1.42 on that

basis. However, review of all of the declaration documents present in the application file reveals that no declaration is present which complies with all of the requirements for acceptance of the a declaration. Counsel's attention is called to 37 CFR 1.497(b)(2), which provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Counsel has not provided an executed declaration of the inventors which provides "the facts which the inventor would have been required to state" and the citizenship, residence and mailing address of the legal representative. More specifically, the legal representative has not signed a declaration declaring the citizenship, residence and mailing address of the deceased inventor. In addition, it appears that the declaration signed by the legal representative has been altered after it was signed, as suggested by the fact that the signature of the last-named inventor appears to have been deleted using "white-out." As such, it still would not be appropriate to accept the papers under 37 CFR 1.42 on the basis of the present record.

DECISION

The Notification of Abandonment mailed on 01 March 2004 is **VACATED**.

The papers under 37 CFR 1.42 are **DISMISSED**, without prejudice.

Applicants are required to reply within **TWO (2) MONTHS** of the mailing date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT**. Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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